

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JACK C. OLDHAM,

Petitioner,

ORDER

v.

08-cv-0036-bbc

MICHAEL THURMER, Warden,
Waupun Correctional Institution,

Respondent.

Petitioner has filed a document captioned as a notice of appeal from the magistrate judge's decision. In it, petitioner raises objections to the substance of the magistrate judge's decision and to his authority to render it. Petitioner's substantive objections largely repeat those that I have already considered and rejected in my order of June 17, 2008. To the extent that petitioner is attempting to assert new objections that he did not raise previously, it is too late for him to do so.

Petitioner appears to be contending that the magistrate judge was not authorized to issue the report and recommendation because petitioner did not agree that Magistrate Judge Crocker could be the presiding judge on the case. Petitioner's consent was not necessary because Magistrate Judge Crocker was never the presiding judge. His involvement in this case was authorized by 28 U.S.C. § 636(b)(1)(B), which permits a district judge to designate a magistrate judge to submit to the court findings of fact and recommendations for

disposition of various matters, including state prisoner applications for habeas relief. At all times during the case, either Judge Shabaz or I remained the presiding judge. Further, because the magistrate judge's recommendations were not binding, petitioner may not appeal from them. Instead, he must file a notice of appeal from my order and judgment entered July 17, 2008. That appeal must be to the United States Court of Appeals for the Seventh Circuit, in accordance with Rules 3 and 4 of the Rules of Appellate Procedure.

ORDER

Petitioner's appeal from the magistrate judge's decision is DENIED.

Entered this 6th day of August, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge